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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/637,459

08/08/2003

Anjali Abhimanyu Patil

Rev 03-20

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05/23/2007

JULIE BLACKBURN

REVLON CONSUMER PRODUCTS CORPORATION

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NEW YORK, NY 10017

EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

05/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/637,459	Applicant(s) PATIL ET AL.	
	Examiner James W. Rogers, Ph.D.	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6,8-11,13-18,20-22,24,25 and 28-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,12,19,23,26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments, see Applicants arguments/remarks, filed 5/9/2007, with respect to the rejection(s) of claim(s) 1,2,4,7,12,19-20,23,26 and 27 under Ferrari et al. (US 2002/0164297) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn, because applicants are correct in that Ferrari does not describe a homogenous composition. However, upon further consideration, a new ground(s) of rejection is made in view of Patil et al. (US 6,342,209 B1) and Calello et al (US 6,485,731 B2).

Election/Restrictions

The examiner noted in the response to the election restriction applicants elected for the multi component ingredient an ester. In claim 20 the multifunctional component claimed is a polymer, therefore the examiner has withdrawn claim 20 for pertaining to an unelected species. Claims 1-40 are pending, claims 3,5-6,8-11,13-18,20-22,24-25 and 28-40 are withdrawn.

Claim Rejections - 35 USC § 112

Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically claim 26 is indefinite because it is not clear what "A long wearing cosmetic composition" would encompass, for instance how long must the cosmetic be worn before it is considered long wearing. To expedite the examining process the examiner simply searched for a composition that would meet all of the

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limitations for the ingredients, since the same composition will have the same properties, such as how long the composition can be worn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,4,7,12,19,23,26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Patil et al. (US 6,342,209 B1).

Patil teaches numerous cosmetic compositions including pigment sticks and anhydrous mascaras that contain all of applicants claimed ingredients including silicone-acrylate film forming polymer, volatile linear siloxane (including octamethyltrisiloxane when $n=1$ in formula at col 7 lin 13), a plasticizer that is the ester of malic acid, satisfying the limitation for a multifunctional ingredient and numerous pigments and non-pigmentitious powders. See entire document, especially col 3 lin 27-41, col 5 lin 21-33, col 7 lin 10-22, col 8 lin 10-62 and col 11 lin 36-col 12 lin 36. Regarding claim 12 Patil specifically mentions that more than one film-forming polymer may be employed and is desirable. See col 5 lin 16-19.

Claims 1-2,4,7,12,19,23,26 and 27 are rejected under 35 U.S.C. 102(a) and 102(e) as being anticipated by Calello et al (US 6,485,731 B2).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Calello teaches cosmetic compositions comprising solvents that can be selected from volatile linear siloxanes (including octamethyltrisiloxane when $n=1$ in formula at col 6 lin 45), film-forming polymers (including silicon/acrylate copolymers) and several additional ingredients including antioxidants, pigments and suspending agents satisfying lipophilic particulates and plasticizers including glycerol, glycol and citrate esters satisfying the limitation for a multifunctional ingredient. See col 1 lin 54-56, col 6 lin 15-55, col 8 lin 44-50, col 10 lin 50-64, col 12 lin 41-col 13 lin 31. Regarding claim 12 Calello specifically mentions that more than one film-forming polymer may be employed. See col 9 lin 61-65. The antioxidants and suspending agents included the same lipophilic non-pigmentitious particulates as described in applicant's specification.

Double Patenting

Claims 1,7,12,19,23 and 26 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,6-14 and 18-20

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of copending Application No. 10/364,245, for the reasons set forth in the previous office action dated 11/13/2006.

Applicants arguments/remarks filed 05/09/2007 have been fully considered but are not persuasive.

Applicant asserts that the subject application does not contain the required hydrocarbons or linear polymer of the 10/364,245 application.

The relevance of this assertion is unclear. The transition phrase comprising in independent claims 1 and 26 does not preclude other ingredients from being present in the compositions mixture, therefore even if application 10/364,245 requires hydrocarbons and linear polymers these element are not excluded from applicants claimed invention. The transitional term "comprising", which is synonymous with "including", "containing", or "characterized by", is inclusive or open ended and does not exclude additional elements or method steps recited in the prior art. *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003).

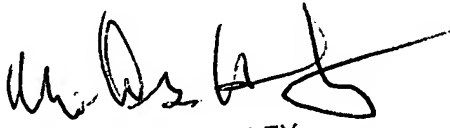
Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER